



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/573,425

05/26/2006

J. Russell Woodside

P2037US

3139

8968 7590 09/30/2009  
DRINKER BIDDLE & REATH LLP  
ATTN: PATENT DOCKET DEPT.  
191 N. WACKER DRIVE, SUITE 3700  
CHICAGO, IL 60606

EXAMINER

MYERS, GLENN F

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

09/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/573,425 | <b>Applicant(s)</b><br>WOODSIDE ET AL. |  |
|                              | <b>Examiner</b><br>GLENN MYERS       | <b>Art Unit</b><br>3652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/24/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Claims 1-16 and 19-21 in the reply filed on 09/04/2009 is acknowledged.

2. Claims 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/04/2009.

### ***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on 3/24/06 is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "the support beams" in Line 6 of the claim. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 5 recites the limitation "the step of vertically moving first" in Line 1-2 of the Claim. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 7 recites the limitation "the second level" in Line 11 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3652

9. Claim 8 recites the limitation "the second level" in Line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 9 recites the limitation "the support levels" in Line 4 of the claim. And the cross-beams" in Line 18 of the claim. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 12 recites the limitation "the cross beams" in Line 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.
12. Claim 14 recites the limitation "the posts" in Lines 4 and 7 of the claim. There is insufficient antecedent basis for this limitation in the claim.
13. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of the this claim is not ascertainable because Claim 16 recites "the method of Claim 14" wherein Claim 14 is not a method claim.
14. The remainder of claims 1-16 are rejected based on their dependency to rejected claims.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3652

16. Claims 1-16 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al 5,836,760 and in view of Bonnet 5,685,416 and in view of Segur 2,934,222.

17. In Re Claims 1-3, 5, 7-12, and 14 Turner teaches a kiln car (Fig. 4) having furniture defining multiple support levels (Fig. 4), the furniture including vertical posts made of silicon carbide (Column 4, Lines 26-29 and Lines 47-51), and wherein each of the support levels (Fig. 4) includes a plurality of horizontal support beams (Fig. 4, Stringers 8a, 8b) made of silicon carbide (Column 4, Lines 37-39), each of the horizontal support beams being mounted to extend between a pair of the posts, and a plurality of generally parallel, horizontal cross-beams (Fig. 4, beams 10a) extending between the support beams, the kiln car having opposite proximal and distal ends (Fig. 4);

18. Turner does not teach a first machine and a second machine, the first machine including a first carriage with a conveyor, the second machine including a second carriage with rollers. Turner does not teach a means for driving the conveyor of the first machine or a means for driving the rollers of the second carriage of the second machine.

19. However, Bonnet teaches a machine (Fig. 1, Extendible Conveyor 10) including a carriage (Fig. 1, Extension 26) with a conveyor (Fig. 1) with rollers (Fig. 1, Rollers 80), the proximal end facing the first carriage, and the distal end facing the second carriage, the second carriage having a plurality of spaced-apart rollers; Bonnet teaches a means for driving the conveyor of first carriage and a means for driving (Fig. 1, Drive Motor 72)

Art Unit: 3652

the rollers of the second carriage (Fig. 1, Drive Motor 72). The means for driving the conveyor and rollers of Bonnet are considered to be an equivalent to applicant's means for driving.

20. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place machines on the proximal end and the distal end of the kiln car of Turner as taught by Bonnet in order to convey the bricks.

21. Turner does not teach a low set stack of bricks in need of firing.

22. However, Segur teaches a low set unfired stack of bricks (Fig. 8, Hack 61).

23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an unfired stack of bricks to the work area of Turner as taught by Segur in order to retain dirt.

24. In Re Claims 4, 11, and 15 Turner teaches that the furniture defines four support levels. (Fig. 4)

25. In Re Claim 6, 13, and 16, as best understood, Turner teaches that the horizontal support beams are mounted to the vertical posts using an opening formed in the vertical posts (Fig. 4).

26. In Re Claim 8, Turner teaches that the second level of the kiln car is below the first one of multiple levels of the kiln car.

27. In Re Claim 19, Turner teaches a tunnel kiln (Column 1, Lines 9-10).

28. In Re Claim 20, the combination rejection of Claims 15 and 19 applies to the claim.

Art Unit: 3652

29. In Re Claim 21, the combination rejection of Claims 16 and 19 applies to the claim.

30. Regarding to claims 1-16 and 19-21, Under the principles of combination, if a combined prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be obvious over the prior art device. When the combined prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the combination will perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). MPEP 2112.02

### ***Double Patenting***

31. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3652

32. Claims 1-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Maser U.S. Patent No. 6,846,147 and in view of Turner.

33. In Re Claims 1-3, 5, 7-12 and 14, as best understood, Maser teaches a kiln car (furniture wagon) having furniture defining multiple support levels (shelving frame), the kiln car having opposite proximal and distal ends;  
a first machine (lifting device) and a second machine (second lifting device), the first machine including a first carriage (shifting cradle) with a conveyor, the second machine including a second carriage (lifting cradle) with rollers (conveyor), the proximal end facing the first carriage, and the distal end facing the second carriage, the second carriage having a plurality of spaced-apart rollers (conveyor);  
placing a low set stack of bricks in need of firing on the conveyor of the first carriage;  
positioning the first and second carriages to a position where the spaced-apart rollers of the second carriage rise between the cross-beams and extend vertically above a selected one of the multiple support levels (shelving frame);  
a low set stack of bricks (material)

34. Maser does not teach furniture including vertical posts made of silicon carbide, and wherein each of the support levels includes a plurality of horizontal support beams made of silicon carbide, each of the horizontal support beams being mounted to extend between a pair of the posts, and a plurality of generally parallel, horizontal cross-beams extending between the support beams, the kiln car having opposite proximal and distal ends;



Art Unit: 3652

35. However, Turner as discussed above teaches the furniture including vertical posts made of silicon carbide, and wherein each of the support levels includes a plurality of horizontal support beams made of silicon carbide, each of the horizontal support beams being mounted to extend between a pair of the posts, and a plurality of generally parallel, horizontal cross-beams extending between the support beams, the kiln car having opposite proximal and distal ends;

36. It would have been obvious to one having ordinary skill in the art at the time the invention was made to build the cart of maser with horizontal support beams and horizontal cross beams as taught by Turner in order to minimize head space.

37. Maser does not teach a second carriage with rollers. Turner does not teach a means for driving the conveyor of the first machine or a means for driving the rollers of the second carriage of the second machine.

38. However, Bonnet teaches rollers (Fig. 1, Rollers 80) on a conveyor (Fig. 1). Bonnet teaches a means for driving the conveyor of first carriage and a means for driving (Fig. 1, Drive Motor 72) the rollers of the second carriage (Fig. 1, Drive Motor 72). The means for driving the conveyor and rollers of Bonnet are considered to be an equivalent to applicant's means for driving.

39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add rollers and a drive motor to the conveyor of Maser as taught by Bonnet in order to convey material smoothly.

40. In Re Claims 4, 11, and 15 Turner teaches that the furniture defines four support levels.

Art Unit: 3652

41. In Re Claim 6, 13, and 16 Turner teaches that the horizontal support beams are mounted to the vertical posts using an opening formed in the vertical posts (Fig. 4).

42. In Re Claim 19, Turner teaches a tunnel kiln (Column 1, Lines 9-10).

43. In Re Claim 20, the combination rejection of Claims 15 and 19 applies to the claim.

44. In Re Claim 21, the combination rejection of Claims 16 and 19 applies to the claim.

45. Regarding to claims 1-16 and 19-21, Under the principles of combination, if a combined prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be obvious over the prior art device. When the combined prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the combination will perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). MPEP 2112.02

### **Conclusion**

46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hansl 6,923,612 discloses a load handling system and telescopic arm. Holscher 5,599,154 discloses high rise shelving. Adelson et al 4,014,442 discloses a stacker crane for storehouses. Hayashi 5,082,415 discloses a forklift style loading apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLENN MYERS whose telephone number is (571)270-

Art Unit: 3652

1160. The examiner can normally be reached on Monday - Friday/7:30AM-5:00PM - 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GLENN MYERS/  
Examiner, Art Unit 3652

/Saúl J. Rodríguez/  
Supervisory Patent Examiner, Art  
Unit 3652